IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8036 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GENERAL MANAGER ABAD DAIRY

Versus

KISHANCHAND SEVARAM

Appearance:

1. Special Civil Application No. 8036 of 2000

MR DEEPAK V PATEL for Petitioner No. 1

MR BV LAKHIA for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/09/2001

ORAL JUDGEMENT

#. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner has challenged the award passed by the

Industrial Tribunal in Reference (IT) No.86 of 1987. The industrial dispute raised by the workmen against the dairy was referred to the Industrial Tribunal, Ahmedabad. The claim of the workmen was regarding the payment of difference in the pay scale. The Industrial Tribunal, after examining the evidence on record, came to the conclusion that the work of machine operating was taken from the concerned workmen even though the post was not so designated as Machine Operator at the relevant time. The Industrial Tribunal also considered the seniority list of the workmen. The Industrial Tribunal, after considering the evidence on record, came to the conclusion that those workmen who were appointed as Machine Operators were juniors compared to the concerned workmen on whose behalf the industrial dispute was raised. Considering the totality of the evidence as well as the evidence on record, the Industrial Tribunal partly allowed the reference and the dairy was directed to pay the pay scale of the Machine Operator to the concerned workmen.

#. It is required to be noted that, the employee Kishanchand Sevaram has already accepted his VRS on 1.6.1983, and therefore, he was entitled to the benefit upto the aforesaid date. So far as another employee Mohanbhai Bhanji is concerned, he has expired, and therefore whatever amount which is required to be paid as per the award of the Industrial Tribunal, is required to be paid to his widow.

#. The learned advocates of both sides placed on record the calculation of the amount which is required to be paid to the concerned employees as per the award of the Industrial Tribunal. As per the said calculation, the employee - Kishanchand Sevaram is entitled to receive Rs.44,924=50 and another employee - Mohanbhai Bhanji is entitled to receive Rs.21,452/-. So far as the merit of the case is concerned, considering the reasonings given by the Industrial Tribunal, I do not think that the Industrial Tribunal has committed any error of law or of facts in passing the impugned award giving the benefit of pay to the aforesaid two employees.

#. Mr.Patel for the petitioner states that the Unit is sick, and therefore, financial position of the Unit is also required to be considered. Mr.Patel states that if the amount is suitably reduced considering the financial difficulty of the management, the management may comply with the final direction given by this Court.

#. Considering the facts and circumstances of the case,

I am of the opinion that if employee Kishanchand Sevaram is paid Rs.30,000/-, instead of Rs.44,924=50, it would meet with the ends of justice. So far as another employee Mohanbhai Bhanji is concerned, since he has already expired, the petitioner should pay Rs.21,452/-, being the full and final amount, to his widow, which is required to be paid as per the award of the Industrial Tribunal. It is required to be noted that this order is passed as per the consensus prevailing between the parties. The award of the Industrial Tribunal is modified to the aforesaid extent and the concerned workman - Kishanchand Sevaram will be entitled to receive, in all, Rs.30,000/- towards the full and final settlement of his case arising out of the award passed by the Industrial Tribunal. Similarly, the widow of Mohanbhai Bhanji will be entitled to receive Rs.21,452/towards the claim as per the award of the Industrial Tribunal. The aforesaid payment will be made by the petitioner within a period of one month from today. The petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)

(pathan)